

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ROBERT HARDEN,

Plaintiff,

vs.

TECUMSEH STATE CORRECTIONAL
INSTITUTE, and NEBRASKA
DEPARTMENT OF CORRECTIONAL
SERVICES,

Defendants.

8:20CV281

MEMORANDUM AND ORDER

This matter is before the court on Plaintiff's motion to withdraw his case, which the court liberally construes as a response to the court's order to show cause (filing 7) and as a motion to voluntarily dismiss pursuant to Federal Rule of Civil Procedure 41. (Filing 8.) On August 13, 2020, the court ordered Plaintiff to show cause within 30 days why this case should not be dismissed pursuant to 28 U.S.C. § 1915(g) or, alternatively, to pay the court's \$400.00 filing and administrative fees. In his response, Plaintiff asks to be allowed to withdraw his case without prejudice "due to wrongful application of Three Strikes Rule to this case filed by a person incarcerated with no funds to pay." (Filing 8.)

Rule 41(a) states that a plaintiff may dismiss an action without a court order by filing "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i). In addition, Rule 41(a)(2) provides that an action may be dismissed at the plaintiff's request "on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). Here, Plaintiff asks the court to dismiss this action, Defendants have not been served with process, and Plaintiff has not demonstrated cause why this case should not be dismissed pursuant to 28 U.S.C. § 1915(g). Accordingly,

IT IS ORDERED that:

1. Plaintiff's motion to withdraw this action (filing 8), construed as a motion to voluntarily dismiss, is granted. This matter is dismissed without prejudice.
2. Plaintiff's Motion for Leave to Proceed in Forma Pauperis (filing 5) is denied.
3. A separate judgment will be entered in accordance with this Memorandum and Order.

Dated this 4th day of September, 2020.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge